

12.235 DRIVING UNDER THE INFLUENCE (DUI): PROCESSING & ARREST

Reference:

- Ohio Revised Code 1547.11(B) - Operating Under
Influence of Alcohol,
Drugs Prohibited;
Test Analysis
- Ohio Revised Code 4511.19(D) - Driving While Under
the Influence of
Alcohol or Drugs or
with Certain
Concentration of
Alcohol in Bodily
Substances; Chemical
Analysis
- Procedure 12.230 - Fatal Crash Investigation and
Placement of Related Charges
- Procedure 12.240 - Multi-Count Uniform Traffic Tag
(MUTT)
- Procedure 12.260 - Warrants for Adults: Service
and Recording
- Procedure 12.270 - Impounding, Moving, and Release
of Vehicles
- Procedure 12.537 - Mobile Video Recording Equipment
- Procedure 12.555 - Arrest/Citation: Processing of
Adult Misdemeanor and Felony
Offenders
- Procedure 12.600 - Prisoners: Securing, Handling,
and Transporting
- Procedure 12.900 - Processing Juvenile Offenders
- Standards Manual - 1.2.4, 61.1.2, 61.1.5, 61.1.10,
61.1.11, 61.2.1, 61.2.2,
61.2.3, 82.2.2, 82.2.5, 82.3.5

Information:

An officer making an arrest for Driving Under the Influence (DUI) must establish reasonable grounds for the initial stop. An officer observing an operator commit a traffic violation or any reasonable investigation are examples of a basis for a stop. The officer must then establish probable cause to arrest for DUI before administering any Blood Alcohol Concentration (BAC) Test. Administer performance tests at roadside prior to arrest.

Each police district has a testing site. District Commanders must designate a supervisor holding a valid breath testing permit as responsible for the care and security of the testing site. Traffic Unit is responsible for the care, maintenance, and instrument checks of the breath testing instrument.

Procedure:

A. Breath Testing for Blood Alcohol Concentration (BAC):

1. Officers making a DUI arrest who are not certified breath testing instrument operators will request one respond to the arresting officers' district.
 - a. If time is of the essence, officers will use the nearest testing site.
 - b. Read the arrested the Miranda Warning and advise him of his right to make a telephone call at the time of arrest. Document in the "Facts" portion of the Cincinnati Police Division Intoxication Report (Form 495).
2. Officers must obtain a breath, urine, or blood test within two hours of the violation (i.e. last operation of a vehicle). There is no time limit when a chemical test is not taken under 4511.19(A)(1).
3. The order of testing for Blood Alcohol Concentration (BAC) is:
 - a. Breath.
 - b. Urine.
 - c. Blood.
4. The breath testing instrument operator must observe the subject for 25 minutes before administering the breath test.
5. The breath testing instrument operator will:
 - a. Ensure the breath testing instrument is functioning properly and the testing site log book is in proper order.

- 1) An internal radio frequency interference (RFI) detector protects the breath testing instrument from radio interference. Radio interference inside the testing site may set off the RFI detector.
- 2) If the RFI detector activates during a breath test, the operator will start the testing process over from the beginning. This does not excuse the arrested from the responsibility of giving an additional breath sample.
 - a) Do not attempt a third test on the breath testing instrument if the RFI detector activates a second time.
 - 1] Time permitting, transport the arrested to another testing site.
 - 2] If time is a factor, the arresting officer will request a urine sample.
 - b. An operator encountering a problem which creates doubt as to the breath testing instrument's accuracy or renders the breath testing instrument inoperable will remove the breath testing instrument from service.
 - 1) The breath testing instrument operator will make a blotter entry noting the reason for removing the breath testing instrument from service and notify the shift officer in charge (OIC).
 - 2) The shift OIC will notify the Traffic Unit as soon as possible, but no later than the Traffic Unit's next working day.
 - c. The breath testing instrument operator will conduct all testing and processing according to the Ohio Administrative Code Sections 3701.53.01-10 and Ohio Revised Code (ORC) Sections 4511.19 and 4511.191.

B. DUI - Arrest:

1. Complete the Multi-Count Uniform Traffic Tag (MUTT) as follows:

- a. Charge all persons arrested for DUI, including a refusal, with ORC Section 4511.19(A)(1) "operate a vehicle while under the influence of alcohol and/or drugs" in the DUI area of the MUTT.
- b. If a completed breath test reveals a person under the age of 21 has a BAC over .02 but under .10 BAC, charge the arrested under ORC Section 4511.19(B)(2) in the first available other offense block of the MUTT.
 - 1) The "Description of Offense" should read: "Operate a vehicle after underage alcohol consumption" 4511.19(B)(2).
 - a) The 4511.19(A)(1) charge is not written for "underage consumption."
- c. If a completed breath test reveals the arrested has a BAC of above .10% but less than .17% the arresting officer will charge the arrested with ORC Sections 4511.19(A)(1) in the DUI area and 4511.19(A)(3) in the first available other offense block on the MUTT.
 - 1) The "Description of Offense" for ORC Section 4511.19(A)(3) should read: "Operate a vehicle with a concentration of _____ Grams by weight of alcohol per 210 liters of breath."
- d. If a completed breath test reveals the arrested has a BAC of ABOVE .17%, the arresting officer will charge the arrested with ORC Sections 4511.19(A)(1) in the DUI area and 4511.19(A)(6) in the first available other offense block on the MUTT.

- 1) The "Description of Offense" for ORC Section 4511.19(A)(6) should read"
"Operate a vehicle with a
concentration of _____ Grams by
weight of alcohol per 210 liters of
breath."
- e. If a completed breath test reveals the
arrested has a BAC of less than .10, the
arresting officer will charge with ORC
Section 4511.19(A)(1). Word the MUTT as
in Section B.1.a.
 - 1) If drug abuse is suspected, or a
combination of alcohol and drug
abuse is suspected, request a urine
sample.
- f. For blood or urine samples when alcohol
is involved, the arresting officer will
charge the arrested with ORC Section
4511.19(A)(1) in the DUI area of the
MUTT and 4511.19(A)(2) or (4) in the
first available other offense area of
the MUTT as follows:
 - 1) Blood: 4511.19(A)(2), "Operate a
vehicle with a BAC above .10 grams
of alcohol per 100 milliliters of
blood."
 - 2) Urine: 4511.19(A)(4), "Operate a
vehicle with a BAC above .14 grams
of alcohol per 100 milliliters of
urine."
 - 3) The lab will send the results to the
arresting officer. The Court
Property Unit will send a copy of
the results to the Traffic Unit.
 - a) The Traffic Unit will send a
copy of the analysis to the City
Prosecutor's Office when
requested.
- g. When only drugs are involved, use
Section 4911.19(A)(1).

- h. If the arrested refuses a breath, urine, or blood test, the arresting officer will charge with ORC Section 4511.19 (A)(1). Word the MUTT as in Section B.1.a.
 - 1) Failure to give an adequate breath sample (deficient sample) is considered a refusal.
- 2. All charges supporting the DUI charge will be written on the same MUTT in the other offense area.
 - a. If another MUTT is used due to additional charges, print the words "Companion Case" across the "Conditions area" of the MUTT. Also, cross reference the MUTT serial numbers on each companion MUTT.
- 3. If the arrested fails to produce a driver's license, but has a valid license through LEADS verification, do not cite for Section 4507.02. If the arrested has no driving privileges, cite Section 4507.02 for the related violation on the MUTT.
 - a. Advise the arrested to surrender the driver's license, within 24 hours of the arrest, to the district where processing occurred.
 - 1) The district receiving the license will forward it to the Traffic Unit.
- 4. Cite the arrested on the MUTT for the fifth calendar day following the arrest. If the fifth day is a Saturday, Sunday, or legal holiday, use the next court day.
- 5. DUI - Physical Arrest:
 - a. Physically arrest the violator having more than two DUI convictions within the last six years. (Example: You have a DUI offender with one prior conviction, they are charged as a second offender. Two prior convictions are charged as third offenders, etc.) Those charged as first and second DUI offenders may be cited (see Procedure 12.555).

- 1) The MUTT and Form 495 must reflect the number of DUI convictions which occurred in the last six years.
- b. If the location of the arrested's residence and place of employment makes extradition necessary (Procedure 12.555), physically arrest and require bond.
- c. If the arrested is hospitalized or remains under hospital care, whether or not a BAC test was given, follow Procedure 12.600 - Prisoners: Securing, Handling, and Transporting.
- d. See Section L. for proper routing of forms.

C. Completing Required Forms:

1. The arresting officer will complete an Administrative License Suspension (ALS) (Form BMV-2255) for each DUI arrest.
 - a. The ALS contains all rights, penalties, and appeals concerning driving privileges. The arresting officer, in the presence of a witness, must read and show the offender the back side of the form regarding the "Test and Refusal Consequences." The arrested must have the opportunity to sign the form. If the arrested refuses, write "Refused" on the signature line. If the offender is unconscious due to injury, write "Unconscious" on the signature line.
 - 1) Ensure the ALS is completed with current information, signed by a witness and notarized before separating the form.
 - a) The violators pink copy must be complete, but notarization is not required.
 - b. Impound the vehicle of a person arrested and charged with DUI for pretrial seizure if they are the owner (LEADS verification) of the vehicle and have a DUI conviction within the last six years.

- 1) Refer to Procedure 12.270, Impounding, Moving, and Release of Vehicles, for towing or moving a vehicle.
 - a) Advise PCS the vehicle is a pretrial seizure when requesting a wrecker.

c. Routing the ALS

- 1) If the arrested tests over .10 BAC or refuses a breath, urine, or blood test:
 - a) Send the original white and green copies to the Traffic Unit.
 - 1] Staple the driver's license of the arrested to the original white and green copies.
 - b) Attach the yellow copy to the MUTT.
 - c) Give the pink copy to the arrested.
- 2) If the arrested tests below .10 BAC or a urine or blood sample is taken:
 - a) Send the original white and green copies to the Traffic Unit.
 - b) Attach the yellow copy to the MUTT.
 - 1] Staple the driver's license of the arrested to the yellow copy.
 - c) Give the pink copy to the arrested.

2. The arresting officer will complete a Notification of Rights (Form 600) for each DUI arrest.

- a. Read and show the arrested the form in the presence of a witness. The arrested must have the opportunity to sign the form. If the arrested refuses, write "Refused" on the signature line.
 - 1) At the time of arrest, read the arrested the Miranda Warning. Refer to Section A.1.b.
- 3. The arresting officer will complete a Form 495 for each DUI arrest.
 - a. The summary of arrest must contain sufficient information to establish reasonable grounds for the initial stop and probable cause to arrest for DUI.
- 4. The instrument operator will complete a State of Ohio Test Report (Form HEA2652), breath test record, and testing site log book entry whenever the breath testing instrument is operated or placed in operation, even if the arrested refuses the test.
 - a. For refusals, complete the State of Ohio Test Report (Form HEA2652) through Step 4. Check the "Refusal" block.
 - 1) The breath test record will show an air blank and the word "Refused" followed by a second air blank, assuring proper working order of the breath testing instrument.
 - b. When a test is refused at the Hamilton County Justice Center, only a urine test can be offered or refused.
 - c. Enter all refusals, instrument checks, breath, urine and blood tests in the testing site log book.
 - 1) If an entry needs to be deleted in the testing site log book, cross out the slot using one "X." The breath testing instrument operator will place his initials in the slot and include the date of the deletion.

D. Urinalysis Testing for BAC:

1. Use the ALS for the implied consent.
 - a. The arresting officer must read and show the arrested, in the presence of a witness, the "Test and Refusal Consequences" on the back side of the form. The arrested must have the opportunity to sign the signature line on the front. If the arrested refuses to sign, write "Refused."
 - b. If a urine sample is taken, write "urine test pending" in the BAC block.
2. A police officer of the same sex as the arrested must witness the giving of urine specimens to assure authenticity.
 - a. Arresting officers do not have to be licensed breath testing instrument operators to process urine samples.
 - b. Collect two samples in clean, tightly closed containers.
 - c. Add one Jenneile Enterprises sodium fluoride capsule to each sample. Indicate on the Evidence Submission Form and the Form 495 the sodium fluoride capsule was added.
 - d. Seal each specimen container with evidence tape.
 - e. Label each specimen container with the name of the arrested, name of the person taking the specimen, date and time the specimen was taken, and that the sodium fluoride capsule was added.
 - f. Complete one original Evidence Submission Form. Place the DUI number in the upper right corner. List the court date and ORC violation.
 - g. Place both sealed specimen containers in one evidence biohazard bag.
 - h. In the outside pocket of the biohazard bag place the following. Do not use staples or paper clips:

- 1) Original Evidence Submission Form.
 - 2) Original Property Tag (Form 327).
 - 3) Original Property Receipt (Form 330).
 - 4) Copy of the Form 495.
3. During normal business hours (0700 to 1600 hours), the arresting officer will hand deliver the evidence to the Court Property Unit.
 - a. If the Court Property Unit is closed, the officer will take the evidence to the Criminal Investigation Section (CIS) and place it in the CIS refrigerator. The delivering officer will make an entry in the CIS log book.
 - b. Court Property Unit personnel will pick up the evidence during normal business hours.
 4. Court Property Unit personnel will take both evidence specimens to the Hamilton County Coroner's Lab for analysis.
- E. Blood Testing for BAC:
1. Use the ALS for the implied consent.
 - a. The arresting officer must read and show the arrested, in the presence of a witness, the "Test and Refusal Consequences" on the back side of the form. The arrested must have the opportunity to sign the signature line on the front. If the arrested refuses to sign, write "Refused."
 - b. If a blood sample is taken, write "blood test pending" in the BAC block.
 2. Only a physician, registered nurse, qualified technician, chemist, or Cincinnati Fire Division paramedic can draw blood specimens.
 - a. A Cincinnati Fire Division paramedic should be the first choice when requesting blood specimens.

- 1) If a paramedic unit has been dispatched to the scene of an accident due to injuries, etc., and the driver is suspected of DUI, the arresting officer may request the paramedic unit draw blood for analysis.
- b. Do not request area hospital personnel (physicians, nurses, etc.) to provide this service unless circumstances warrant their assistance.
 - 1) An officer who has reasonable grounds to believe a subject was driving under the influence of alcohol or drugs may request a blood test pursuant to ORC Section 4511.191. The officer will request the hospital perform the appropriate test by completing an official request form designed by each hospital.
 - a) If the hospital refuses to assist in obtaining the specimen, contact the Traffic Unit.
- c. PCS cannot dispatch Fire Division paramedics for the sole purpose of drawing blood to ascertain BAC.
- d. Arresting officers do not have to be licensed breath testing instrument operators to process blood samples.
- e. The arrested will be shown and read the ALS and agree to have his blood drawn for the purpose of analysis.
 - 1) An unconscious person is deemed to have given consent under ORC Section 4511.191.
 - 2) When the arrested exercises his right to refuse to take a blood test under ORC Section 4511.191, no test may be given.
 - 3) The use of force to take blood samples is not permitted in Ohio.

- f. A police officer will witness the drawing of the blood samples and maintain control of the evidence for court purposes.
- 3. Obtain two blood specimens.
 - a. Be sure the test tubes for the blood specimens have a gray cap and contain sodium fluoride and potassium oxalate as anticoagulants. Officers needing blood test tubes will contact the Traffic Unit.
 - b. Seal each specimen container with evidence tape.
 - c. Label each specimen container with the name of the arrested, name of person taking the specimens, and the date and time specimens were taken.
 - d. Complete one original Evidence Submission Form. Place the DUI number in the upper right corner. List the court date and ORC violation.
 - e. Place both sealed specimen containers in one evidence biohazard bag.
 - f. In the outside pocket of the biohazard bag place the following. Do not use staples or paper clips:
 - 1) Original Evidence Submission Form.
 - 2) Original Form 327.
 - 3) Original Form 330.
 - 4) Copy of the Form 495.
 - g. Route the evidence as outlined in Section D.3. of this procedure.
- F. Testing for Drug Abuse:
 - 1. When drug abuse, or a combination of alcohol and drug abuse is suspected, obtain either a urine or blood specimen and follow Section D. or E. of this procedure. Do not complete a State of Ohio Test Report (Form HEA2652).

G. Fourth (4th) Degree Felony Arrests:

1. Persons arrested with three or more prior DUI convictions within six years will be charged as a 4th degree felony (see Section B.5.a.1).
 - a. Officers must verify through the Regional Crime Information Center (RCIC) and Law Enforcement Automated Data System (LEADS) that a person has at least three prior convictions within six years before charging as a 4th degree felony.
 - b. In bold letters write "4th DEGREE FELONY" in the conditions block of the MUTT and the top of Form 495.
2. Physically arrest all persons charged as a 4th degree felony DUI as outlined in Procedure 12.555.
 - a. Persons arrested for a 4th degree felony DUI will appear in Room A the next court day.
 - b. Complete the Arrest and Investigation Report (Form 527) and the Bond Information Sheet (Form 527A) as outlined in Procedure 12.555.

H. Juvenile DUI Offender:

1. A juvenile DUI offender is processed the same as an adult when probable cause exists for ORC Section 4511.19(A)(1) and a completed breath test reveals the juvenile has a BAC of .10 or above.
 - a. The arresting officer will charge the juvenile with ORC Sections 4511.19(A)(1) and 4511.19(A)(3) on the MUTT (see Section B.1.c.)
 - 1) Word the "Description of Offense" ORC Section 4511.19(A)(1) and 4511.19(A)(3) the same as an adult (see Section B.1.c.).
 - 2) The ALS is completed the same as an adult (see Sections C.1.a., b., and c.).

- b. A juvenile DUI offender is processed the same as an adult when probable cause exists and the offender is charged with ORC Section 4511.19(A)(1) when the offender refuses any chemical test.
 - c. Release the juvenile to a parent or guardian only.
 - 1) Cite the arrested juvenile on the MUTT for the fifth calendar day following the arrest. If the fifth day is a Saturday, Sunday, or legal holiday, use the next court day.
 - a) The court appearance is at 1500 hours in Juvenile Court, Broadway Building, 800 Broadway.
- 2. A juvenile is processed for "Underage Alcohol Consumption" ORC Section 4511.19(B)(2), when a completed breath test reveals the juvenile has a BAC of .02 to less than .10, and probable cause does not exist for the ORC Section 4511.19(A)(1) offense of DUI (see Information section on Page 1).
 - a. Word the "Description of Offense" ORC Section 4511.19(B)(2) as follows: "Operate a vehicle after underage consumption" in the first available other offense area of the MUTT.
 - 1) An ALS is not completed for underage consumption.
 - 2) Staple the driver's license to the MUTT.
 - 3) A juvenile who refuses a breath test for underage consumption (4511.19(B)) will not be treated as a refusal.
- 3. If physically arrested, follow Procedure 12.900, Processing Juvenile Offenders.
- 4. Obtain the consent of a parent or legal guardian before taking a blood sample.

5. Write the word "Juvenile" in bold letters in the top left corner of the original Form 495 and all copies.

I. DUI Investigation Record (Form 496):

1. The breath testing instrument operator will complete a Form 496 (DUI jacket) for each DUI arrest. The DUI jacket will contain the following forms:
 - a. Original Form 495.
 - b. Original Form HEA2652.
 - c. Original Breath Test Record.
 - d. Original Form 600.
 - e. One copy of the Ohio Traffic Crash Report (OH-1), if applicable
 - f. One copy of the ALS.
 - g. One copy Form 527, if applicable.
 - h. One copy of the MUTT.
 - i. One polaroid picture (adults only).
2. When a video tape from an in-car camera is held as evidence in a DUI case, clearly mark the 527, MUTT(s), and 495 with "ACE" (Automated Control of Evidence). This will alert the Prosecutor's Office that a tape is available.
3. The testing site supervisor will review and file all DUI jackets.
 - a. The testing site supervisor will ensure each form is properly completed and initial the front lower left corner of the DUI jacket.
4. DUI jackets can only be removed for court or with the permission of the district testing site supervisor or district commander.

a. To remove a DUI jacket, complete an entry in the DUI Jacket Sign Out Log. The entry must contain the DUI jacket number, name of the officer removing the DUI jacket, reason (including room number and case number), and the date removed. The DUI jacket must be returned promptly and an entry made in the log indicating the return date. The site supervisor will re-file the DUI jacket.

1) Officers unable to return DUI jackets within five days must submit a Form 17 explaining why.

b. The testing site supervisor will ensure accountability and security of all DUI jackets.

1) An audit of all DUI jackets will be conducted on January 1st and July 1st each year. Forward a summary of the audit through the affected bureau commander to Inspections Unit and Traffic Unit.

J. Use of Testing Sites by Outside Agencies:

1. A Form 495 will be used for each outside agency arrest. If the outside agency has its own intoxication report, assign a Cincinnati DUI number to each report.
2. The arrest will be entered in the Cincinnati Police Division testing site log book by DUI number in numerical order.
3. The State of Ohio Test Report (Form HEA2652) will be completed when any breath test is given (not necessary with blood or urine).
4. All original documents, Form 495, State of Ohio Test Report (Form HEA2652), Breath Test Record, Form 600, ALS, Operator's License, and any other form completed for the arrest will remain with the arresting officer from the outside agency. It will be the responsibility of the arresting officer from the outside agency to forward the proper copies to their court system.

5. Copies of all of the above listed forms completed for the arrest will be filed in the Form 496. Mark in bold letters on the top of the case jacket "OTHER AGENCY ARREST."
 6. Copies of all the paperwork listed in 4. above will be sent to the Traffic Unit.
- K. Supervisory Review of Completed Forms:
1. A supervisor will review all forms for accuracy and completeness. The approving supervisor will initial the rear of the Form 495 and initial all other forms in the front lower left corner.
 2. The testing site supervisor will review the log book weekly for accuracy and completeness.
- L. Routing Completed Forms:
1. All copies must be hand delivered before 0800 hours each court day. Each copy must be legible and on 8-1/2" X 11" paper.
 - a. City Prosecutor's Office, 801 Plum Street, Room 200:
 - 1) Two copies of the Form 495.
 - 2) One copy of the State of Ohio Test Report (Form HEA2652) and breath test record stapled to the Form 495.
 - 3) One copy of the OH-1, if applicable.
 - b. Municipal Court Probation Division, Broadway Building, 800 Broadway:
 - 1) One copy of the Form 495, placed in an envelope and labeled "Municipal Court Probation Division" and left at the Prosecutor's Office.
 - c. Traffic Unit, 314 Broadway, 2nd Floor:
 - 1) One copy of the Form 495.
 - 2) The original white and green copy of the ALS with the driver's license attached, if applicable.

- a) Attach the license to the ALS when breath tests are over a .10, or any chemical test is refused and forward to the Traffic Unit.
 - b) Attach the license with the yellow copy of the ALS to the MUTT for ORC Section 4511.19(A)(1) on any test under a .10 BAC, or blood and urine samples.
- 3) One copy of the State of Ohio Test Report (Form HEA2652) and breath test record.
- a) Attach all of the forms together.

M. Instrument Checks:

1. Traffic Unit will perform an instrument check on the breath testing instrument once every seven days.